



**Delaware Thoroughbred Racing Commission
Minutes of Regular Meeting Held On
January 9, 2013**

The Delaware Thoroughbred Racing Commission held a Regular Meeting on Wednesday,
January 9, 2013, at 11:15 a.m., at the Delaware Department of Agriculture Building,
2320 South DuPont Highway, Dover, Delaware 19901.

The following Commission members were present:

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| W. Duncan Patterson, Jr., Chairman |
| Edward J. Stegemeier, Secretary/Commissioner |
| Henry James Decker, Commissioner |
| Debbie Killeen, Commissioner |

The following Commission members were excused:

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| Bernard J. Daney, Commissioner |
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The following individuals also were present:

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| Ed Kee, Delaware Secretary of Agriculture |
| Austin Short, Deputy Secretary of Agriculture |
| Andrew Kerber, Esq., Deputy Attorney General, Commission Counsel |
| John F. Wayne, DTRC Executive Director |
| Fritz Burkhardt, DTRC, Associate State Steward |
| Robert E. Colton, Delaware Jockey's Association, Director |
| Jeff Ganc, Delaware Park, Assistant Director of Security |
| Bessie Gruwell, DTHA, Executive Director |
| Madeline Locke, DTHA, President |
| John E. Mooney, Delaware Park, Executive Director of Racing |
| Tracy Nunley, Owner/Trainer, DTHA Board Member |
| Shelley Perkins, DTRC, Paralegal I (recording minutes) |
| John T. Peters, D.V.M., DTRC, Chief Commission Veterinarian |
| Keli Peterson, Trainer |
| Ramon Rodriguez, DTRC, Inspector |
| Joe Strug, Dalare Associates Inc., Laboratory Director |
| Francis J. Swift, Jr., DTRC, Inspector |
| Jane C. Teichner, V.M.D., DTRC, Associate Commission Veterinarian |
| Paul Trapani, Owner, DTHA Board Member/Secretary |
| Michael Vild, Esq., Delaware Park, Sr. Vice President of Racing/General Counsel |
| Dr. Carissa Wickens, University of Delaware, Assistant Professor |

1. **WELCOME & CALL TO ORDER**

At 11:18 a.m., Chairman Patterson called the meeting to order and welcomed those in attendance. An audio recorder is in use by the Commission and a digital recording of the meeting is underway.

2. **APPROVAL OF MINUTES**

A. **October 10, 2013**

Upon a motion duly made (Decker) and seconded (Stegemeier) the Commission approved the meeting minutes of October 10, 2012.

B. **November 7, 2012**

Upon a motion duly made (Killeen) and seconded (Decker) the Commission approved the meeting minutes of November 7, 2012.

3. **OLD BUSINESS**

A. **BEAP: DDA/Dover Verification**

Commissioner Decker asked whether the BEAP issue had been resolved. Executive Director Wayne reported that the issue had been resolved. Mr. Wayne explained that the DTRC provided a list of riders from Delaware Park eligible for treatment to Ms. Christine Vennard, DDA/Finance. Ms. Vennard is to review the monthly invoices from BEAP to ensure that the client BEAP treats is, in fact, on the list of jockeys eligible for treatment.

4. **NEW BUSINESS**

A. **2013 Contract Status Report (DRA/DTHA)**

Chairman Patterson directed that speakers in the following order would be recognized, Secretary Kee, Mr. Vild, and the DTHA.

1. **Secretary Kee**

Secretary of Agriculture, Ed Kee, addressed the Commission and reported there is no contract and remarked that, in his opinion, Thoroughbred racing in this State is in jeopardy, not only this year but in future years. Secretary Kee helped facilitate meetings between the two parties this past summer, and, at a meeting in November 2012, he thought the parties were pretty close to consensus on 12 of 15 issues. At that point, November 2012, they had agreed on the number of days etc. Secretary Kee remarked that the breaking point could have been that Delaware Park accessed two million dollars from the operating account last year (2012?). Delaware Park has agreed to reduce that to 1.5 million dollars for 2013, and since then there has been no discussion between the two.

Two Suggested Code Changes:

- A. To reduce days fewer than 100 and doing so requires a Code change.
- B. Simulcast Code states that there must be a contract in place between DTHA and Delaware Park. Secretary Kee's change in Code is a motivational piece that spurs the two sides to get the contract done. "If there is not a contract in place for the upcoming meet by December 1, then the responsibility to arrange/set the terms of that contract will be set by the Commission." Some may say that's usurping DTHA/Delaware Park authority. It's Secretary Kee's observation that each party thinks "they own it" – however, one can't have major league baseball without the team and the league. The franchise for horseracing is the State of Delaware, and that's another rationale that if we don't have a contract by December 1, that the Commission would have the responsibility. (Kee involved as the official-body kicking it to the Commission)

2. **Mr. Michael Vild – Delaware Racing Association**

Mr. Vild agreed with Secretary Kee's remarks and found his analogy of baseball very apt, with management on one side and the players on the other. Nevertheless, the funds going to Delaware Park are considered funds until a contract, and are considered purse money upon a contract. Mr. Vild is hesitant to respond to Mr. Herb Mollis' letter, received by Mr. Vild yesterday, and does not

think the letter and its intended response will go toward resolving the contract issue. Mr. Vild agreed with Secretary Kee that at the November meeting the issues were resolved and DTHA would return from their board with a commitment – they did not. Mr. Vild had a discussion in the interim with Mr. Herb Mollis as to the division of revenue side and we are in the process of evaluating yet another approach to the division of revenue. Mr. Vild prefers to leave it at that – and wishes not to address Mr. Mollis letter – thereby leaving the parties in the best possible position to reach common agreement.

Chairman Patterson thanked Mr. Vild for the explanation on the purse account and asked Mr. Vild to clarify why he requested 100 days. Mr. Vild replied that the statute requires we race a minimum of 100 days and code states we must do so by the second Tuesday of February. Mr. Vild remarked that they want to race fewer than 100 days – but filed the 100-day request to operate within the confines of the statute. Of course, if we come to an understanding to run fewer days and that restriction in the law is changed it is our expectation that we would ask not to run those 100 days.

Commission Counsel Kerber stated that in his opinion, we permit them to race 100 days – if they decide not to run 100 days that is fine too. It is a legislative invitation/permission/an offering to run 100 days.

Commission Decker remarked to Mr. Vild that Mr. Mollis clearly is awaiting a response from you and asked if one had been issued. Mr. Vild replied that he had issued no response.

Secretary/Commissioner Stegemeier remarked that legislative change takes months – time that we do not have.

Commissioner Decker commented that he disagreed with Secretary Kee's interpretation and suggested 100 days be stricken from the code and no mention of a specific number of days be written. If the two parties cannot agree then we just cannot go on and the Commission must act now. The 100 days sets up expectation and disappointment with everyone choosing sides and is not a good way to go. Moreover, it works against the coordination of other racing jurisdictions. Looking forward, that coordination is critical to Delaware Thoroughbred racing. Everyone has talked about having a circuit but we are losing that battle. Delaware Park goes every year to make the tour to attract trainers and it is critical to align the race days. Commissioner Decker would prefer 30 days or no number – final analysis be the Commission's decision. We all work the numbers and understand the others view point. Halfway through the racing season last year found our stalls half empty – 500 empty. Regardless of whether the two parties reach an agreement for 2013, the Commission may seek legislative change. However, he does not believe that getting legislative change will be a "cakewalk."

Secretary/Commissioner Stegemeier asked if it was possible tie-in what is available per the purse and set the number of race days by using that figure. That is to say, look at it as purse money per day – then come to the days by virtue of the money. For example, if the desired daily purse was \$200,000 then the corresponding live race days may be 89 days.

Commissioner Killeen voiced her concern that you came so close that at this point you may need the Commission to move things along.

Mr. Vild remarked in response to Secretary/Commissioner Stegemeier suggestion, using that computation is what he (Mr. Vild) has been looking at and the direction they have been moving.

Chairman Patterson remarked that even at those 89 days, it still does not meet the \$200,000/day threshold.

DTHA Executive Director Ms. Gruwell commented that if the track was not taking 1.5 million dollars from the purse account, we would be closer to that threshold. And that there has been no communication from Delaware Park to DTHA since November.

Chairman Patterson commented that it was his understanding that because of the holidays Delaware Park just did not have the figures to reply to DTHA.

Mr. Vild remarked that Chairman Patterson was correct. In hindsight, Mr. Vild added, he was in error for setting a December 21 reply date – and he regrets that error.

Mr. Mooney commented that we have had the same problem since day one. Delaware will face a lot more competition than ever faced before, especially with Maryland coming on with two casinos, this will be more competitive than we have seen in over 3 years.

Secretary/Commissioner Stegemeier remarked to Ms. Gruwell that he understands what the DTHA is facing but does not think the Commission can do much more than say “get it together.” Where the Commission can impact is via legislative rule changes – the Commission can offer language and ease restrictions.

Ms. Gruwell remarked that Delaware Park thinks that they do not need a contract in place for them to operate simulcast – and as long as they think that, we will never be able to reach an agreement.

Commissioner Decker remarked that we cannot go into legislature with a specific number – it will not get passed by legislature.

Ms. Gruwell wondered why we can't attract horses when we have the best backstretch.

Mr. Mooney replied that it was because of a lack of money.

Ms. Gruwell remarked that it is not just money – it is purse distribution – and, using a baseball analogy, consider AAA league and AA leagues.

Commissioner Decker cautioned that the DTHA may be misinterpreting what he was saying – and he would expect that all factors (purse money etc.) would be taken into account and the number of horses. Commissioner Decker's recommendation as to the specific number of days is that the DTHA is setting itself up for disappointment – we could just say 30.

Commissioner Killeen asked about setting a high/low – if that was a possibility. And as for the money, if you have good racing you will have money.

Secretary Kee remarked that, while he respects Mr. Decker's right to disagree, he believes his own interpretation is correct. The language he (Secretary Kee)

has drafted trumps that specific number of day's issue. The best thing today is to encourage the track and the horsemen to get it resolved. Then we can act legislatively – cannot go into legislative hall without an agreement.

3. Ms. Madeline Locke – DTHA

DTHA President, Ms. Locke remarked that she believe Secretary Kee and Mr. Vild provided a very fair analysis. We would like to come to an agreement as we all realize we are looking down the barrel of a gun. We all realize we need to race fewer days.

The DTHA wanted access to the training track because we have a core number of horsemen that we consider home based, even though their address is Maryland. Tracy Nunley, Juan Vazquez, and Jamie Ness represent 50% of horsemen at Delaware Park, and we (the DTHA) offered to pay for winter stabling because, for most people, if there was/is access to the racetrack the number of days becomes less important.

For Delaware Certified program to work requires quality racing. Right now we get 15/16 million dollars a year from casino. Secretary Kee has been talking about a survey to find out what that dollar will realize in Delaware and the positive influence racing is in Delaware.

Secretary/Commissioner Stegemeier remarked that he was surprised to hear Ms. Locke say that shrinking the meet would not be much of an issue if horsemen had greater access to the track, including winter stabling.

Ms. Locke reported that the DTHA would be willing to give up days for access – access means winter stabling, training track, track personnel, and track approval for coming and going from Delaware Park and greater access to track facilities while traveling to race at area tracks open in the winter months. Then people could stay at Delaware Park. It costs the trainers thousands of dollars because there is no winter stabling at Delaware Park.

Commissioner Decker remarked that Delaware Certified dropped 50%.

4. Ms. Tracy Nunley – DTHA

DTHA board member, Ms. Tracy Nunley thanked Secretary Kee for his involvement, without which she reported the parties would be nowhere.

Ms. Nunley reported that the biggest issue to horsemen is the ability to come and go from Delaware Park freely within a circuit. Besides the money, they want a place to come and go from. Ms. Nunley believes that they have to have a minimum number of days but is not sure about a maximum number.

Ms. Nunley asked that the Commission delay today's 100-day license.

Secretary/Commissioner Stegemeier asked Commission Counsel Kerber if we could deny the request for 100 days.

Commission Counsel Kerber replied no and stated that that would not make any difference.

Ms. Nunley asked if the Commission could postpone their decision and schedule an emergency hearing in February.

Mr. Vild remarked that the Commission could conditionally approve the request for 100 days with the understanding that the parties will be back before the Commission at the Commission's February meeting.

Ms. Locke asked Mr. Vild if they could schedule a date/time now to meet.

Mr. Vild replied that he would do that now.

Commissioner Decker remarked that Commission meetings require 7-day notice.

Chairman Patterson asked Commission Counsel Kerber what he suggested.

Commission Counsel Kerber replied that, with due respect to the track's counsel, a conditional approval of the 100 days would not help. If the horsemen think deferring it will help then we can state that.

Chairman Patterson asked Mr. Mooney if the Commission waited and awarded the number of days in February, would that provide him enough time.

Mr. Mooney replied that it would not and that we needed a decision before the end of January. Mr. Mooney added that last year we missed every publication and we were the last track to get out a condition book.

Ms. Locke commented that when we did that last year we (the DTHA) felt that more money went into the state's schedule than we had wanted.

Chairman Patterson commented that it was his understanding that the state schedule had already been declared – isn't that right?

Ms. Locke replied that she thought he was correct.

Chairman Patterson declared that the number one issue was an agreement between the track and the horsemen on number of days, and asked Mr. Kerber if that was correct.

Commission Counsel Kerber answered that the track has come to the Commission for 100 days.

Mr. Vild replied that that is correct.

Commission Counsel Kerber reported that it could all fall into place and speculation would not help. Nothing will go through legislation by the end of January.

Chairman Patterson commented that he would like to separate the two issues. The first issue being today's request for 100-days and the second issue being a legislative change, which could not happen until there is a contract.

Mr. Vild agreed with Mr. Patterson's summation and reported that the DRA's legislative obligation is "to substantially comply" with putting forth an agreement to race 100 days. The issue may become the definition of "substantially."

Commissioner Decker asked Mr. Kerber that if we (the DTRC) do not sign the track's request for 100-days then the track could "skip on the whole thing."

Commission Counsel Kerber replied that Mr. Decker's statement was correct, and added that if he were in Mr. Vild's position he would do the same – that is seek the Commission's signature on the 100-days while seeking a contract with the horsemen for fewer days.

Mr. Vild remarked that the statute states the license shall consist of 100 days of live racing. The second part is what may be the consequence for not meeting the obligation to comply.

Commissioner Decker remarked the statute states that it is finally the lottery director, under the administrative procedures act, that determines whether or not the parties substantially complied.

Commission Counsel Kerber reported that the lottery director would determine the licensees continued failure to substantially comply with this statute. Mr. Kerber reported that If the track applies to the Commission for 100 days and they enter into an agreement with the horsemen for 81 days which they then advertise 81 days, then the lottery director would have to give the track notice that they are not substantially complying with statute. Mr. Kerber agreed that then Mr. Vild could answer before a tribunal hopefully with the DTHA that they together reached agreement for 81 days.

Mr. Vild stated that he would not do anything to jeopardize Delaware Park's licenses to operate.

B. 2013 Request for Live Racing & license to Operate

Upon a motion duly made (Stegemeier) and seconded (Killeen/Patterson) the Commission approved Delaware Park's request for 100-days of live racing and signed the 2013 License to Operate with the caveat that the DTRC Chairman be authorized by this motion to communicate by letter, in his own words, to the Secretary of Agriculture, the Governor, and the individual members of the General Assembly to the effect that Thoroughbred racing in the State of Delaware is at a critical juncture and needs immediate amendment to the **3 Del.C. section 10148** addressing the 100 day racing requirement if Thoroughbred racing is to have a successful meet and prosper into the future.

C. Legal Opinion

DTRC requested the Office of the Attorney General to issue a legal opinion on the following questions. (Attached)

Questions Presented:

"If a Delaware racetrack, which holds a license from the Director of the State Lottery Office (the "Lottery Director") to maintain video lottery machines within the confines of the racetrack, submits an application to the Commission pursuant to 3 Del. C. § 10122 to conduct a Thoroughbred racing meet with 100 days of racing in a calendar year, does the Commission have the legal authority to award the racetrack less than 100 days of racing in said calendar year if the Commission deems this to be in the best interest of Thoroughbred racing in Delaware, notwithstanding the provisions of 3 Del. C. § 10148, which require a racetrack maintaining video lottery machines to conduct live racing operations on at least 100 days during any calendar year? Does Commission Rule 5.2.5 have any impact on this question?"

Conclusion:

"In our opinion if a Thoroughbred racetrack files an application under 3 Del. C. § 10122 for a license to conduct at least 100 days of live racing and the application otherwise meets the standards for approval by the Commission, the Commission does not have legal authority on its own initiative to award less than 100 days of live racing to the applicant racetrack even if the Commission were to determine that it was in the best interest of racing to award less than 100 racing days. Any such approval would be contrary to the express intent of the General Assembly set forth in 3 Del. C. § 10148(1)."

D. 2013 Capital Budget – Delaware Racing Association

Mr. Vild presented Delaware Racing Association's 2013 Capital Budget.

Commissioner Decker inquired as to how the determination is made to split an asset between racing allocation and non-racing allocation. For example there is a drawer refrigerator for food safety issued worth \$2500 dollars and \$130 went to the racing allocation – how is that decided?

Mr. Vild replied that if, in management's opinion, the capital item is a benefit to both racing and non-racing operation then the allocation is made on the basis of revenue. The racing revenue is somewhere between 5% and 10% of total revenue. If the asset will be a benefit to both, then that allocation is applied. That percentage will be consistent any time there is a division between racing and non-racing. Commissioner Decker asked Mr. Vild if it is their intention then, at this stage, to split approximately \$2.5 million in capital outlay. Mr. Vild replied that that was correct. Commissioner Decker asked if that was inclusive of the outlay for the backstretch – Mr. Vild replied that it was.

Ms. Locke remarked the (DTHA) are contributing to capital plans with food & beverage yet none of those revenues from food & beverage come back to racing, and asked what the rationale was behind that. Mr. Vild replied that racing patrons take advantage of those food & beverage offerings. Ms. Locke commented that racing itself doesn't get any credit for any of that revenue and asked Mr. Vild if that was correct. Mr. Vild replied that if there are no fans here then that would be a serious detriment. Ms. Locke remarked that she understood that food & beverage revenue is not included in the racing revenue so they (DTHA) do not get any of that money anyway, they (DTHA) just pay for the facilities but don't get the revenue. Mr. Vild remarked that they (DTHA) don't pay for anything. Chairman Patterson commented that it is not money coming out of the Horsemen's pocket. Ms. Locke reported that in years past it was part of the capital expenditure. Chairman Patterson and Secretary/Commissioner Stegemeier concluded the discussion and remarked spending by DRA exceeded capital budget by millions of dollars.

5. REPORT FROM EXECUTIVE DIRECTOR

A. Laboratory Inspection

Mr. Wayne filed his report with the Commission of the November 29, 2012 laboratory inspection made of Dalare Associates, the contract laboratory for equine testing.

On January 17, 2012, Dalare Associates received *"Certificate of Accreditation ANSI-ASQ from the National Accreditation Board/ACLASS to certify that Dalare Associates had been assessed by ACLASS and meets the requirements of international standard ISO/IEC 17025:2005 while demonstrating technical competence in the field of testing."*

During the November 29, 2012 laboratory inspection, DTRC Chairman Patterson, Secretary/Commissioner Stegemeier, and Executive Director Wayne inspected the laboratory environment and made a review of the testing procedures. Laboratory Director, Mr. Joseph Strug, reported *"the high-resolution mass spectrometer and auto-*

sampler, and liquid chromatography is used. We screen everything by that technique now, in addition to the ELISA. Everything is HPLC (high-performance liquid chromatography,) which is the way that we introduce the extracts from the blood and urine samples into a liquid stream that separates the drugs and detected by the mass-spectrometer. The newest process that we purchased can identify the drugs looking at the molecular weight to the 5th decimal place and that is what enables us to have the sensitivity and specificity to screen for hundreds of drugs in any given run. Our goal right now, which we're working on and we're almost there, is to actually be screening under the TOBA requirements for Graded Stakes racing. They have minimum criteria of Class 1, 2, 3, and 4 drugs to screen for, plus an additional 20, 30, or 40 optional ones that you choose from each class of drugs. In addition, with this new technology, we can screen for all these drugs, which we could not do before so this has been a great asset to us and is just making testing better and better and it is what everyone is using in the racing industry right now. At the ICRAV convention, that was held in Philadelphia in September 2012 almost every paper that was presented in terms of screening for drugs was using this technology, so this is state-of-the-art and it's getting better and better."

In conclusion, Mr. Wayne reported the following DTRC 2012 equine forensic drug testing statistics:

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| Urine Samples | 897 |
| Blood Samples (no urine collected) | 54 |
| Blood Samples for quantization of phenylbutazone, oxyphenbutazone, furosemide, and blood doping agents | 951 |
| Blood samples from euthanized horses | 22 |
| Blood work-out samples | 41 |
| Special Tests | 25 |

B. Summary of Activities Report

Executive Director Wayne submitted his written report to the Commission and read into the record the statistics for the period November 1 through December 31, 2012. Report details included the following:

| | <u>Nov./Dec. 2012</u> | <u>Year-to-Date</u> |
|---------------------------------------|-----------------------|---------------------|
| Number of Persons Fingerprinted | 0 | 86 |
| Fingerprint Fees Collected | 0 | \$6,794 |
| DTRC Licenses Issued | 186 | 4,740 |
| Fines & Appeal Fees Collected | \$6,700 | \$29,551 |
| License Fees Collected | \$10,190 | \$179,090 |

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|--------------------------------|----|
| Media Contacts | 1 |
| Law Enforcement Contacts | 9 |
| FOIA | 1 |
| ARCI National Surveys | 3 |
| Public Inquiries | 13 |
| VLEU | 8 |
| Jurisdiction Inquiries | 19 |
| Jockey Club Inquiries | 1 |

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| National Racing Compact Background Investigations | 3 |
| National Compact Licenses | 79 |

Total revenue for 2012 was \$208,641 down from \$224,365 in 2011. Mr. Wayne attributed the decline to less racing opportunities, less people getting owner's licenses, economic factors may contribute as people may only get licensed when/if they race at Delaware wherein years past may have purchased a license to retain on file, 3-year license cycle. Mr. Wayne projects a continued downward trend.

C. Annual ARCI Meeting

During the first week of December, Chairman Patterson and Mr. Wayne attended meetings of the Associate of Racing Commissioners International (ARCI) held in Tucson, Arizona.

The ARCI gave preliminary approval to a list (attached) of seventeen "Controlled Therapeutic Medications."

Chairman Patterson reported that a February 6, 2013 meeting is scheduled for the Mid-Atlantic jurisdictions and commented that the industry should prepare for a stricter application of rules applied to veterinarians and trainers. THA has agreed, HBPA meetings are still underway.

Mr. Strug asked about whether they had discussed requiring veterinarians and trainers to file formal reports pertaining to equine drug treatments. Chairman Patterson reported that was to be a large part of new rules.

D. DDA/Thoroughbred Website

Mr. Wayne demonstrated the DDA/Thoroughbred website and led a virtual-tour through the website – a one-stop-shop for Delaware race fan. Dan Shortridge and Sherie Nicholas have done an excellent job in providing a fine resource for the commission. Chairman Patterson commended Mr. Wayne on a fine job with the website.

<http://dda.delaware.gov/thoroughbred/index.shtml>

Information found on the website includes:

- Updated monthly sometimes daily
- Meeting notices
- Faq
- Stewards rulings – every ruling from the
- Stewards daily reports
- Annual reports
- links

6. REPORT FROM CHIEF COMMISSION VETERINARIAN

Dr. Peters reported that since our last meeting, we have lost two horses in training at Delaware Park. One broke both sesamoids and another broke the left front sesamoid and a canon bone and pastern bone. Aside from that, things have been going very smoothly since the meet closed.

7. **REPORT FROM DELAWARE THOROUGHBRED HORSEMEN'S ASSOCIATION**

A. **Delaware Certified Thoroughbred Program**

Executive Director Gruwell filed the year-end report. In 2012 the DCTP paid out \$846,843 in bonuses. Ms. Gruwell remarked, as Commissioner Decker alluded to earlier, enrollment is down. The advisory committee is meeting later today to address that issue. The DCTP ending balance was \$24,154.34. Ms. Gruwell will make formal request to the State for one million dollars; bringing the 2013 starting balance to \$1,024,154.34. In 2012 the total number of two-year-olds was 232; compared with 328 in 2011.

8. **ADJOURN**

At 1:04 p.m., upon a motion duly made and seconded, the meeting was adjourned. No Executive Session was held.

If deemed necessary, the Commission will meet next on February 13, 2013.